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OFFICE OF PETITIONS

In re Application of :
Ashley J. Birkett : DECISION GRANTING
Application No. 10/082,014 : PETITION
Filed: February 21, 2002 :
Attorney Docket No. 85124 :
:

This is a decision on the petition filed April 22, 2002, to accord the above-identified application a filing date of February 21, 2002, instead of February 22, 2002.

The petition is **granted**.

37 CFR 1.10(d) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

All of the above requirements have been met. Therefore, the application will be accorded a filing date of February 21, 2002.

Receipt of the Declaration and Power of Attorney and \$65 surcharge in response to the Notice of March 29, 2002 is acknowledged.

A petition fee is unnecessary for a petition requesting relief under 37 CFR 1.10. Therefore, a refund of the petition fee will be scheduled.

This application is being forwarded to the Office of Initial Patent Examination Division for further processing with a filing date of February 21, 2002.

Telephone inquiries concerning this matter may be directed to Karen Creasy at (703) 305-8859.



Brian Hearn
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Office of the Deputy Commissioner
for Patent Examination Policy